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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

15 In re APPLE COMPUTER INC. DERIVATIVE
16 LITIGATION

17 This Document Relates To:

18 MARTIN VOGEL and KENNETH
19 MAHONEY, on Behalf of Themselves and
All Other Similarly Situated,

20 Plaintiffs,

21 v.

22 STEVEN JOBS, PETER OPPENHEIMER,
23 FRED ANDERSON, WILLIAM V.
24 CAMPBELL, MILLARD S. DREXLER,
ALBERT GORE, Jr., ARTHUR D. LEVINSON,
25 JEROME B. YORK and APPLE COMPUTER,
INC.,

Defendants.

Master File No. C-06-04128-JF

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: March 9, 2007
Time: 10:30 a.m.
Courtroom 3, 5th Floor
Honorable Jeremy Fogel

Case No.: C-06-05208-JF

Honorable Jeremy Fogel

1 Pursuant to Fed. R. Civ. P. 26(f), Civil Local Rule 16-9, and the Clerk's Notice Dated
2 January 30, 2007 Setting a Case Management Conference for March 9, 2007 at 10:30 a.m., the
3 parties to the above-entitled action jointly submit this Joint Case Management Statement.

4 **I. DESCRIPTION OF THE CASE**

5 **A. Brief Description of the Events Underlying the Action**

6 **1. The Parties' Joint Description of the Case**

7 This is a putative class action asserting claims under the federal securities laws arising
8 from the alleged conduct of defendant Apple Inc. ("Apple" or "the Company") in backdating
9 stock options awarded to certain senior officers and directors. On June 29, 2006, Apple publicly
10 announced that an internal investigation had discovered irregularities related to the issuance of
11 certain stock option grants made between 1997 and 2001, that a special committee of Apple's
12 outside directors had hired independent counsel to perform an investigation, and that the
13 company had informed the SEC. This announcement was followed by additional updates
14 regarding the investigation, most recently resulting in Apple's December 15, 2006 filing of Form
15 12b-25, which stated "Apple will need to restate its historical financial statements to record non-
16 cash charges for compensation expense relating to past stock option grants." On December 29,
17 2006, Apple announced that it filed its Form 10-Q for the quarter ended July 1, 2006, and its
18 Form 10-K for the fiscal year ended September 30, 2006, in which it recognized "additional non-
19 cash stock-based compensation expenses" relating "solely [to] certain stock option grants made
20 between 1997 and 2002."

21 In the Complaint filed by Plaintiff Vogel on August 24, 2006, the named plaintiff seeks
22 recovery on behalf of purchasers of Apple securities and/or individuals who sold put options on
23 Apple shares (the "Class") between December 1, 2005, and August 11, 2006 (the "Class
24 Period."). This Complaint alleges claims against Apple and certain current and former members
25 of its Board of Directors and certain senior executives, including Steven P. Jobs, Peter
26 Oppenheimer, Fred D. Anderson, Arthur D. Levinson, Jerome B. York, Albert A. Gore, William
27 V. Campbell, and Millard S. Drexler, pursuant to 15 U.S.C. sections 78n(a), 78j(b) and 78t(a), or
28

1 Sections 10(b), 14(a) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder by
 2 the Securities and Exchange Commission (“SEC”), 17 C.F.R. section 240.10b-5.

3 On March 14, 2005, the Company issued its proxy statement for the annual meeting to be
 4 held on April 21, 2005 (the “2005 Proxy Statement.”), which sought shareholder approval to
 5 increase the number of shares reserved for issuance under Apple’s Employee Stock Purchase
 6 Plan by 2 million to a total of 70 million shares, and to increase the number of shares reserved
 7 for issuance under the Company’s 2003 Employee Stock Option Plan by 49 million. The 2005
 8 Proxy Statement did not disclose any irregularities or improper accounting relating to previously-
 9 issued stock options. The shareholders approved the increases.

10 On January 19, 2007, the Court appointed Plaintiff New York City Employees’
 11 Retirement System as Lead Plaintiff and the law firm of Grant & Eisenhofer P.A. as lead counsel
 12 for the putative class. Lead Plaintiff will file a consolidated complaint by March 15, 2007. This
 13 complaint may expand the claims and the class period as alleged in the original complaint filed
 14 by Plaintiff Vogel. Defendants reserve all rights to oppose any attempt by Plaintiffs to add
 15 additional plaintiffs or attempt to expand the alleged class period.

16 **2. Defendants’ Statement:**

17 The Defendants deny any and all allegations of wrongdoing as set forth in this action and
 18 specifically deny that they are liable to any person or entity based on the allegations contained in
 19 the complaint in this action. Defendants also deny that this matter is properly maintainable as a
 20 class action and specifically reserve all rights to oppose a motion for class certification in the
 21 event that one is filed. Defendants will set forth their full position in subsequent pleadings at
 22 appropriate stages of the case, and reserve all rights, defenses and objections in the interim.

23 **B. The Principal Factual Issues Which the Parties Dispute**

24 **1. Plaintiffs’ Position:**

25 Although defendants here "deny any and all allegations of wrongdoing as set forth in this
 26 action," plaintiffs note that defendants have admitted that the Company improperly accounted for
 27 stock options by restating their financial results in that regard, and that prior to restating their
 28 financials, defendants sought and obtained shareholder approval for the issuance of new stock.

1 **2. Defendants' Position:**

2 As set forth above, the Defendants deny any and all allegations of wrongdoing as set
 3 forth in this action and specifically deny that they are liable to any person or entity based on the
 4 allegations contained in the complaint in this action. Defendants also deny that this matter is
 5 properly maintainable as a class action and specifically reserve all rights to oppose a motion for
 6 class certification in the event that one is filed. As noted, Defendants will set forth their full
 7 position in subsequent pleadings at appropriate stages of the case, and reserve all rights, defenses
 8 and objections in the interim.

9 **C. The Principal Legal Issues Which the Parties Dispute**

10 The principal legal issues that Plaintiffs contend are in dispute are:

- 11 (1) Whether the defendants violated sections 10(b), 14(a) and 20(a) of the Exchange
 Act;
- 13 (2) Whether the defendants caused Apple to issue false and misleading proxy and
 financial statements;
- 15 (3) Whether this case deserves class wide treatment;
- 16 (4) Whether the defendants are liable to any person or entity based on the allegations
 contained in the complaint in this action; and
- 18 (5) Whether the defendants caused any legal cognizable damages.

19 **D. CLASS ACTION ISSUES**

- 20 (1) The specific paragraphs of Fed. R. Civ. P. 23 under which this action is
 maintainable as a class action:

22 Plaintiffs maintain that this case is described above are appropriately brought pursuant to
 23 Fed. R. Civ. P. 23(a), and (b)(1), (2) and (3).

24 Defendants deny that this matter is properly maintainable as a class action.

25 (2) A description of the current putative class or classes in whose behalf the action is
 26 brought:

27 Plaintiff Vogel brought this action on behalf of himself and all purchasers of Apple
 28 securities and/or individuals who sold put options on Apple shares between December 1, 2005,

1 and August 11, 2006. Excluded from the putative Class are Defendants, as well as their
2 affiliates or assigns.

3 Lead Plaintiff will file a consolidated complaint on behalf of the putative class on March
4 15, 2007, which may expand or alter the alleged class description. Defendants reserve all rights
5 to oppose any attempt by Plaintiffs to add additional plaintiffs or attempt to expand the alleged
6 class period.

7 Plaintiffs assert that the putative class claims meet the requirements of Rule 23(a) for the
8 following reasons:

9 (1) The Class is so numerous that joinder of all members is impracticable. It is
10 reasonable to assume that holders of the common stock are geographically dispersed throughout
11 the United States;

12 (2) There are questions of law and fact which are common to the Class and which
13 predominate over questions affecting any individual class member. The common questions
14 include, *inter alia*, the following:

15 (i) Whether Defendants falsely reported to the public, through its
16 financial statements and proxy materials, the Company's awarding of
stock options to its senior management and employees;

17 (ii) Whether defendants' actions violated the federal securities laws;

18 (iii) Whether defendants' actions damaged plaintiffs.

19 (3) The claims and defenses of the New York City Employees' Retirement System
20 are similar to the claims and defenses of the absent class members.

21 (4) The New York City Employees' Retirement System will fairly and adequately
22 represent the interests of the members of the class. The New York City Employees' Retirement
23 System is committed to prosecuting the Class counts and has retained competent counsel
24 experienced in litigation of this nature.

25 (5) Defendants have acted on grounds generally applicable to the Class with respect
26 to the matters complained of herein, thereby making appropriate the relief sought herein with
27 respect to the class as a whole. Further, the prosecution of separate actions would create the risk
28 of inconsistent or varying adjudications which would establish incompatible standards for

1 conduct for the Defendants; and/or adjudications which would as a practical matter be
 2 dispositive of the interests of other members of the Class.

3 Plaintiffs assert that the putative class claims meet the requirements of Rule 23(b) for the
 4 following reasons: The class counts assert claims for violation of the federal securities laws.
 5 Prosecution of these claims by individual members of the class could create a risk of inconsistent
 6 or varying adjudications with respect to the defendants' disclosure obligations and adjudication
 7 of these claims could, as a practical matter, be dispositive of the rights of Apple's public
 8 shareholders to challenge the disclosures at issue in this litigation. Further, Plaintiffs allege that
 9 the defendants named herein have acted on grounds generally applicable to all of Apple's public
 10 shareholders by, as Plaintiffs allege, publishing incomplete and misleading disclosures. Finally,
 11 questions of law and fact common to all members of the class predominate over any questions
 12 that may arise relating to individual class members in this litigation.

13 Defendants deny that the putative claims meet the requirements of Rule 23(a) or 23(b)
 14 and specifically deny that this matter is properly maintainable as a class action.

15 **E. Other Factual Issues Which Remain Unresolved**

16 There are no unresolved factual issues regarding service of process, personal jurisdiction,
 17 subject matter jurisdiction or venue.

18 By letters to O'Melveny & Myers LLP ("OMM"), counsel for all Defendants except Fred
 19 Anderson, and Munger, Tolles & Olson LLP ("Munger"), counsel for Fred Anderson, dated
 20 February 12, 2007, and February 28, 2007, respectively, Plaintiffs sought to engage in a
 21 proactive discussion with Defendants about the preservation of electronic evidence, as is now
 22 suggested by the recent amendments to Federal Rules of Civil Procedure 26 and 34, among
 23 others. Plaintiffs met and conferred in this regard with OMM on February 21, 2007. Munger
 24 plans to provide a written response to plaintiffs. Plaintiffs have asked Defendants to identify the
 25 specific files Defendants have elected to preserve. Defendants have agreed to provide Plaintiffs
 26 with a written summary of their preservation efforts and are considering Plaintiffs' request to
 27 identify specifically what files have been preserved. Defendants believe that they have taken and
 28

1 are taking all reasonable steps necessary to preserve relevant materials as required by the Federal
2 Rules of Civil Procedure.

F. The Parties Which Have Not Been Served and the Reasons

4 All of the Defendants currently named have been served at this time. As set forth below,
5 Plaintiffs anticipate filing a consolidated complaint on March 15, 2007, which may include
6 additional parties.

G. The Additional Parties Which the Below-Specified Parties Intend to Join and the Intended Time Frame for Such Joinder

9 Plaintiffs have proposed filing a consolidated complaint in this action by March 15, 2007.
10 Plaintiffs also proposed a briefing schedule which incorporates the previous agreement that
11 Defendants have forty-five days to respond to the complaint. Plaintiffs further proposed that
12 Plaintiffs' opposition to any motion to dismiss be due forty-five days after the filing of such
13 motion, and that a reply brief be due twenty days after that time. Defendants have agreed to this
14 proposal.

H. The Following Parties Consent to Assignment of This Case to a United States Magistrate Judge for Trial

17 The parties do not consent to assignment of this case to a United States Magistrate Judge
18 for trial.

II. ALTERNATIVE DISPUTE RESOLUTION

20 On February 27, 2007, after having met and conferred regarding ADR options, the parties
21 filed a Notice of Need for ADR Phone Conference. Plaintiffs are amenable to participating in an
22 ADR process now, but Defendants believe that it is premature at this time to engage in ADR.
23 Defendants will discuss ADR options with Plaintiffs as appropriate during the course of the
24 litigation.

III. DISCLOSURES AND DISCOVERY

26 The parties met and conferred regarding discovery and agree that due to the stay of
27 discovery imposed by the P.S.L.R.A., formal discovery, including initial disclosure, in this action
28 is premature. In addition, Plaintiffs may deem it appropriate to seek relief from the PSLRA stay

1 to ensure preservation of evidence or as is otherwise appropriate. Defendants do not believe that
2 any such relief is appropriate or warranted in this action.

3 **IV. TRIAL SCHEDULE**

4 The parties believe that it is premature to request a trial date or to assess the possible
5 length of the trial at this time.

6 Dated: March 2, 2007

7 Respectfully submitted,

8 **GRANT & EISENHOFER P.A.**

9 By /s/ Lesley E. Weaver
Lesley E. Weaver

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19
20 *Attorneys for Proposed Lead Plaintiff*
The New York City Employees' Retirement System

1 Dated: March 2, 2007

GEORGE A. RILEY
DAVID M. FURBUSH
LUANN L. SIMMONS
O'MELVENY & MYERS LLP

4 By: /s/ Luann L. Simmons

5 Luann L. Simmons

6 Attorneys for Defendants STEVEN P. JOBS,
7 PETER OPPENHEIMER, WILLIAM V.
8 CAMPBELL, MILLARD S. DREXLER,
9 ALBERT GORE, JR., ARTHUR D. LEVINSON,
10 JEROME P. YORK, and APPLE INC. (formerly
11 Apple Computer, Inc.)

12 Dated: March 2, 2007

13 JEROME C. ROTH
14 YOHANCE C. EDWARDS
15 GENEVIEVE A. COX
16 MUNGER, TOLLES & OLSON LLP

17 By: /s/ Yohance C. Edwards

18 Yohance C. Edwards

19 Attorneys for Defendant FRED D. ANDERSON

20 Filer's Attestation: Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest
21 under penalty of perjury that concurrence in the filing of the document has been obtained from
22 Lesley E. Weaver and Yohance C. Edwards.

23 Dated: March 2, 2007

24 By s/Luann L. Simmons
25 Luann L. Simmons

26 Attorneys for Defendants STEVEN P.
27 JOBS, PETER OPPENHEIMER,
28 WILLIAM V. CAMPBELL, MILLARD S.
DREXLER, ALBERT GORE, JR.,
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YORK, and APPLE INC. (formerly Apple
Computer, Inc.)